

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

FEB - 6 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)

Federal-State Joint Board)
On Universal Service)
)
_____)

CC Docket No. 96-45
(Report to Congress)

**REPLY COMMENTS OF THE
EDUCATION AND LIBRARY NETWORKS COALITION**

Introduction

The Education and Library Networks Coalition ("EDLINC") reiterates its strong support for the Commission's universal service rules, particularly the Commission's implementation of Section 254(h). We would also note that the comments of other parties indicate that the educational discounts enjoy broad support. Although some incumbent local exchange carriers have objected to providing discounts for Internet access and internal connections, this position runs counter to the views of most other parties, and is not unanimous even with the industry.

In response to the comments of other parties, we offer the following observations:

1. **The Commission's rules governing discounts for schools and libraries are well within the Commission's authority.** As we stated in our comments, Section 254 is not a detailed code addressing every issue that might arise in the course of establishing and implementing a universal service mechanism. Consequently, those parties who point to this or that provision of the Act as proof that the rules do not conform to the plain language of the statute are adopting an overly simplistic view. The only fair reading of Section 254 is that it is a

No. of Copies rec'd 204
List ABCDE

general directive to the Commission to establish a mechanism along the general lines established by Congress.

Under *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984), the Commission has broad discretion, because on many key points the Act is either silent or ambiguous. Congress was most clear not in the details of describing a proposed universal service mechanism but in establishing the broad principles underpinning the mechanism. Chief among these is encouraging competition. With respect to schools and libraries specifically, another key principle is “access” to “advanced services,” terms which Congress left undefined.

Consequently, the arguments of such commenters as SBC Communications and GTE are simply beside the point. For example, GTE claims that the Commission misread the intent of the statutory reference to “access to advanced telecommunications and information services,” because if the Commission can extend those services to schools and libraries, it must also extend them to other universal service recipients. But this is not true, because Congress gave the Commission discretion to develop the overall mechanism, and in doing so the Commission may take into account both the needs of the different classes of consumers and the economic effects of its decisions.

In addition, as noted by NCTA, nothing in the Act prohibits the Commission from permitting non-telecommunications carriers to receive universal service support, and the goals of the Act are advanced by that decision. Therefore, it was appropriate for the Commission to exercise its authority under Section 4(i) for that purpose.

Similarly, the Commission was careful to limit the services eligible for discounts to items that fairly fall within the scope of “additional services.” Because Congress did not define the term and the phrase does not have a commonly understood meaning in this context, the

Commission has substantial discretion to determine what Congress meant. Accordingly, it was reasonable and proper for the Commission to extend the discounts to some forms of Internet access and to the provision of internal connections. The Commission acted within its authority under Section 4(i), because it was clearly attempting to implement the will of Congress, as plainly expressed in the legislative history cited by the Commission and in our comments. Thus, although the plain language of the statute does not clearly address every aspect of the Commission's rules, it cannot be said that the Commission's rules stray beyond the boundaries imposed by Congress.

2. The Commission has done a good job in delimiting the services that are eligible for discounts. The Commission has made a number of hard decisions about what should and should not be eligible.¹ On the whole, the Commission has struck the right balance between minimizing the burden of the fund to providers and maximizing the benefits to libraries, schools, and the communities and children they serve.

3. We agree with those parties who argue that Internet access must be eligible for discounts. In particular, we note that Senators Burns and Stevens share this view, and are glad that they agree that providing discounts for Internet access is not only good policy if universal service is to succeed, but was contemplated by the Congress. We have advocated this position from the time of our first filing in this docket. We continue to support the Commission and its determination of what services are eligible for discounts. *See also* United States Internet Providers Association Comments; America Online, Inc., Comments.

¹ The Commission has disagreed with the interpretations of both providers and EDLINC at various times. In so doing, they have maintained an important, impartial balance between the two communities. EDLINC continues to look forward to working with all the parties involved in refining and improving this important national program.

4. We agree that internal connections should be eligible for discounts. Internal connections clearly fall under the Commission's authority to enhance access to telecommunications services to the extent technically feasible and economically reasonable. The plain language of Sections 254(b)(6) and 254(h)(2)(A) authorizes the Commission to ensure that services are available in classrooms. Without support for internal connections, access to telecommunications services and the Internet would effectively remain beyond the reach of many schools and libraries. The Commission's decision was critical to ensuring that Section 254(h) is successful in reaching the goals outlined by its Congressional sponsors. Schools and libraries must be able to bring services directly to classroom and patrons if they are to be of real benefit, and for that reason alone support for internal connections is well within the scope of what Congress intended in adopting Section 254.

5. We agree with NCTA and other commenters that the Commission should continue to allow as many potential service providers as possible to serve schools and libraries. Allowing choice among as many competing services and service providers as possible not only promises the best value to schools, libraries, and consumers, but also advances the explicit goal of the Act to further competition. Congress could not have intended to limit the universal service mechanism in the way that some incumbent local exchange carriers argue, because to do so would undercut the clear intention of promoting competition. As we noted in our comments, allowing only a small class of entrenched incumbents to receive universal service support would defeat the goal of increased competition because schools and libraries would have no choice but to buy service from a single source.²

² We agree with the Comments of Teleport Communications Group, Inc. ("TCG"), insofar as they say that Section 254(e) does not apply to support for schools and libraries. TCG Comments at 3. We disagree with TCG's conclusions, however.

In addition, we believe that schools, libraries, and consumers would best be served by allowing the maximum level of competition for the services of schools and libraries. We believe that all providers of services that are functionally equivalent to supported telecommunications services, Internet service, and internal connections should be eligible for discounts, regardless of the method used to deliver those services and the regulatory regimes under which those service providers might operate. Allowing this variety of choice will help to allow schools and libraries in all areas of the country — from Miami, Florida, to Barrow, Alaska — to receive services. Wireless service providers, cable service providers, and private network operators should all be enabled and encouraged to provide services to schools and libraries.

6. There is no need to adjust the cap of the fund from its current \$2.25 billion level. The Commission has been criticized in some quarters for allegedly establishing, without Congressional authorization, a large new “tax” to pay for the schools and library discounts. We believe that this is not justified by the facts, for four reasons. First, no one can deny that Congress expressly established a discount program, and Congress surely knew the discounts would have to be paid for. Second, the fund is collected only on an as-needed basis. That is to say, the Universal Service Administration Company will only collect funds as schools and libraries are promised the funding. This automatically serves as a check against waste in the system, while ensuring that the burden on service providers is minimized. Third, current estimates done by the Congressional Budget Office indicate that, in the first year of the program, demand will reach \$539 million—only a quarter of the potential burden of \$2.25 billion. *Federal Subsidies of Advanced Telecommunications for Schools, Libraries, and Health Care Providers*, Congressional Budget Office (January 1998) (available from <http://www.cbo.gov>). The other \$1.5 billion will not be collected in the first year unless the demand dramatically exceeds

projections, which is not likely. Fourth, since the burden on service providers is likely to be not more than about \$539 million, there is no need for the Commission to adjust the cap upwards or downwards. The Commission judiciously made collections occur on an as-needed basis, which automatically minimizes the impact on entities paying into the fund, while simultaneously ensuring that schools and libraries get the support they need.

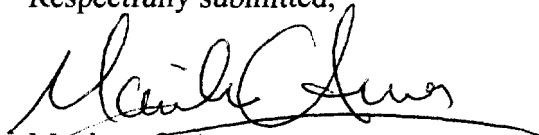
7. Strong support exists for the Universal Service Program in the school and library communities, among commercial service providers, and among philanthropic organizations. As of the date of this filing, internal calculations from the Schools and Libraries Corporation indicate that roughly 5,900 applications have been received. Obviously, a large number of schools and libraries are very enthusiastic about the program and are eager to begin participating in the discounts. Furthermore, a number of private corporations (including telecommunications providers, Internet service providers, manufacturers of networking and computer equipment, cable television providers, and others) have also expressed their support for the e-rate program, both through filings with the FCC, *see, e.g.*, NCTA Comments; AOL Comments, articles in the press, and through extensive outreach efforts aimed at helping schools and libraries gear up for the program (see, for example, 3Com's web site dedicated to the universal service program at <http://www.3com.com/erate/>). Finally, the program has been successful in its goal of helping schools and libraries leverage existing sources of funding, as well as attract new sources of funding. In addition to multiplying the purchasing power of current school and library technology dollars, the program is being seen by philanthropic organizations as an effective way to ensure that charitable dollars have the maximum impact on school and library technology. A recent article in the Chronicle of Philanthropy cited a number of instances in which charitable institutions have increased funding either directly to schools and

libraries or have increased their funding of online educational resources in response to the availability of the Universal Service Fund. "Wiring Schools for Success," Chronicle of Philanthropy, January 15, 1998 (this article is also available online from <http://www.philanthropy.com/articles.dir/v10.dir/i06.dir/06tech.htm>).

Conclusion

Once again, EDLINC congratulates the Commission and urges the Commission to stand by its interpretation of Section 254.

Respectfully submitted,



Matthew C. Ames

MILLER & VAN EATON, P.L.L.C.
1150 Connecticut Avenue
Suite 1000
Washington, D.C. 20036-4306
Telephone: (202) 785-0600
Fax: (202) 785-1234

Attorneys for EDLINC

February 6, 1998

G:\client\Universal-7496\01-Gen\Reply Comments - Report to Congressv2.doc